

1 came out of the blue.

2 Q Turning to page 16 of Exhibit 23, do you recognize
3 that document?

4 A Yes.

5 Q Is it the document that you were talking about
6 that you received from your accountant?

7 A Yes, it is.

8 Q This is the document that --

9 A Wait. Hold on. Let me actually look at it. Yes.

10 Q This is the document that you placed in front of
11 Mr. Hicks?

12 A That's correct.

13 Q Now what, if anything, did you do as a consequence
14 of learning about the proposed sale of WRBR to Hicks
15 Broadcasting of Indiana, LLC?

16 A I asked Dave for a copy of the application. I
17 don't believe he had one, at least not at that time. He had
18 some papers that related to it that he had in his office
19 that he showed me, but he did not have the full application
20 itself.

21 I expressed my dismay that the instruction of the
22 board to obtain an opinion and give us disclosure that this
23 was going to take place before he entered into any oral or
24 written agreement had not taken place. There wasn't really
25 a whole lot I could do right at that point in time.

1 We already had scheduled our second board meeting,
2 which was scheduled for January 28. I knew that it would
3 come up at that point. I contacted Mr. Zaragoza, who was
4 our communications counsel, and asked him to obtain a copy
5 of the application and all the documents.

6 He had been unaware of the filing at that point
7 either, so he provided -- I seem to recall the document or
8 the application was filed like maybe the 10th or the 15th of
9 December. Normally these things come out on notice sheets.
10 Maybe because of the Christmas holidays or something it
11 didn't, but he was able to get a copy of the materials and
12 send it to me, and I did have them before the board meeting.

13 Mr. Hicks -- at that time I had asked him. I said
14 we want copies of everything. We want to know what's filed
15 and what's going on here. He did get some things together
16 prior to the board meeting.

17 I am certain that I called John Cook. Again, we
18 had had multiple attorneys at Miller Canfield. John Cook
19 had primarily represented us during the merger transaction.
20 I called John because Ric -- at the September board meeting,
21 Ric Brown had accepted responsibility for obtaining that
22 opinion and providing it to the board. He was a board
23 member, our corporate counsel and a director. That seemed
24 to tie it all up. I figured he would do that. That's why I
25 really didn't worry about it because nothing had happened.

1 Time had passed. I hadn't seen anything. I
2 figured well, Ric is going to make sure that we have that
3 information. Since we had a board meeting coming up, I
4 think we just started collecting information and waited
5 until that board meeting to further discuss it.

6 Q You had mentioned Mr. Zaragoza. What involvement,
7 if any, did he have with Crystal, aside from being FCC
8 counsel?

9 A Did had become a shareholder of the Airborne Group
10 right around the time that we went on the air in 1988.

11 Q So he then continued to hold shares in the Crystal
12 Group?

13 A That's correct.

14 Q Was an agenda prepared for the January 28 board
15 meeting?

16 A Yes.

17 Q Do you know what happened to it?

18 A Do I not have it here? Do I know what happened to
19 the agenda?

20 Q Yes, sir.

21 A If I have a copy, perhaps it's in the file.

22 Q All right. In other words --

23 A There would have been an agenda for the meeting,
24 yes.

25 Q Okay. Do you know whether or not anything

1 appeared on the agenda relative to WRBR?

2 A I don't have the agenda here to look at, but it
3 was scheduled to be discussed at that meeting. We did
4 discuss it at the meeting.

5 Q Along those lines, I would like to direct your
6 attention to pages 17 and 18 and 19 of Exhibit 23. Do you
7 recognize that document?

8 A Yes, I do.

9 Q What is it?

10 A Minutes of the board meeting on January 28, 1994,
11 and also minutes of the shareholders meeting the same date.

12 Q All right. Directing your attention to the bottom
13 of that first page, which would be page 17 of Exhibit 23,
14 what is that all about?

15 A Just further discussion about the South Bend
16 transaction.

17 Q What kind of discussion took place?

18 A At the -- the situation was very charged, to say
19 the least, at the time of this meeting. There was a high
20 level of distress on my part with what had taken place up to
21 this point, that we had been blindsided by this transaction
22 and proposal where we thought in the September meeting we
23 had been very clear in what our expectations were regarding
24 Mr. Hicks and this transaction.

25 Those expectations were not met. The notice and

1 opinion that were requested were not received, and we were
2 finding ourselves in the unenviable position of having to
3 deal with something after the application had already been
4 filed.

5 Based on the way the transaction had been
6 described -- you're asking what took place at the meeting.
7 We had specific discussion about every aspect of this
8 transaction, including ownership, rights to future
9 ownership, financing, day to day management, boxes being
10 checked on FCC applications, supporting documents that would
11 normally be made available along with an application,
12 buy/sell agreements, side letters, shareholder agreements.
13 All these things came into the discussion at that meeting.

14 Q Did you take them one at a time?

15 A We spent a considerable amount of time talking
16 about this. I don't think that we pursued a logical plan.

17 Again, these were six individuals, some of whom
18 had known each other for -- well, Dave and Ric presumably
19 had known each other for a long time, and the four of us,
20 the other directors, had known each other for a long time.
21 There was no question we divided up in camps.

22 We were the ones that had come in and assumed a
23 tremendous amount of debt that we didn't have before. I had
24 signed personally for this. We were building a business.
25 We were going through some difficult times with the business

1 itself with loss of staff.

2 This was not the thing we should have been doing
3 at that time, so the discussion really revolved around why
4 are we having this discussion? Why are we talking about
5 this? Why didn't you do what we said to do, and what are
6 the consequences going to be to us if you go ahead with this
7 transaction the way that it's structured?

8 By the way that it's structured, I mean what he
9 told us were the ownership arrangements that he had, the
10 future ownership arrangements, the financing, the
11 programming, all of these things.

12 Q What did he say?

13 A I knew that it wasn't right from an FCC
14 standpoint.

15 Q What did he tell you? He meaning Mr. Hicks,
16 right?

17 A Well, Hicks and Ric Brown both. Prior to this
18 meeting, Ric Brown wanted to resign from the board of
19 directors. He came to me and said because of the emotions
20 and all the charges that were blowing here, prior to this
21 meeting Ric Brown said that he wanted to resign.

22 When I talked with him -- I think we talked on the
23 phone prior to the meeting, and I said Ric, you brought us
24 this far. I said if you believe that this is a viable
25 proposal and that everything is legitimate and legal, then

1 you damn well better get out here and tell everybody that.
2 Don't just scurry off right now and not do that. You know,
3 if you really believe that, which he insisted it was, then
4 you come out and you tell everybody that.

5 He didn't like talking about -- you know, I talked
6 about conflict of interest and fiduciary responsibility and
7 all this stuff prior to the meeting. He didn't like me
8 saying that to him. He resented that clearly. I said don't
9 you resign now. You come out here, and you make your case.

10 It was a combination of Dave talking and Ric
11 talking about why what we thought -- we or me; it's
12 primarily me. What I was seeing there and why it wasn't
13 what I thought it was and why it wasn't so bad, so we went
14 through point by point justifying all the things and
15 explaining and countering my concerns and still went back to
16 the opinion saying this is all well and good, but we still
17 need to have that opinion.

18 At this point the application is already pending,
19 so it's out there in the open, but there's been no potential
20 for damage to our license at that point other than if you
21 took some misrepresentation on the application maybe that
22 could flow back, but the deal hadn't been consummated so I
23 guess we still felt that we had a way out.

24 Q What was your understanding of the financial
25 commitment of Mr. Hicks in this WRBR transaction?

1 A Dave said himself that he had absolutely no out of
2 pocket on this and would not be contributing anything to the
3 deal.

4 Q What was your understanding regarding future
5 ownership?

6 A That Dave was only going to hold onto it until Mr.
7 Dille could either obtain a waiver of the cross ownership
8 rules or until the Commission dispensed with the cross
9 ownership rules on its own.

10 Q What was your understanding of how the application
11 was filled out?

12 A That the application was completed by a third
13 party and that a signature page was provided to Mr. Hicks
14 only.

15 Q Did any discussion come up regarding any of the
16 particular questions on the application form?

17 A We went through the application, the ownership
18 qualification section, and specifically stopped and focused
19 and spent a great deal of time on No. 15.

20 Q What did you talk about?

21 A I think it's like -- it's maybe not the only No.
22 15, but it's the only that deals with agreements/
23 understandings regarding future ownership or options.

24 Q What kind of discussion did you have?

25 A When I got a copy of the application from Mr.

1 Zaragoza and reviewed it, I saw that Question No. 15. It's
2 a Yes/No check box, and the No box was checked signifying
3 that there was no understanding, oral or written, and I am
4 just paraphrasing here, regarding future ownership of the
5 station.

6 That box being checked No flew in the face of
7 everything that we had been told, everything that Mr. Dille
8 had said to me in that short -- that brief encounter, and
9 everything that Mr. Hicks had said in the September board
10 meeting and he continued to say in the January board meeting
11 regarding the planned subsequent transfer to someone other
12 than himself and that he was simply shepherding this,
13 holding onto it acting as a shill or a straw man until some
14 other events took place.

15 Q Was there any justification advanced as to why the
16 question was checked No?

17 A Yes.

18 Q What was said?

19 A It was because there's nothing in writing. I
20 pointed out that that's not what the question asks. It says
21 understandings. I believe that is a word that's there. It
22 says understanding or something like that. I could look at
23 it and tell you what I'm focused on.

24 If he can explain it to us and Mr. Dille can refer
25 to it early on, then that would seem to be an understanding

1 to me. The fact that you don't have documents drafted or in
2 final form I think as Mr. Brown would say -- there were some
3 drafts, but nothing was finalized yet.

4 The fact that these things were not on paper
5 doesn't mean that you don't have an understanding.
6 Obviously you can never put something on paper until
7 you've -- unless it's just by osmosis; until you've talked
8 about it in advance. You draft a document based on the
9 understandings you have between the parties, so they're
10 telling me what the understandings are, and they checked it
11 no, none of those things exist.

12 Now, even if that was at the time that that
13 application was filled out -- let's say this is in early
14 December. Based on what Mr. Hicks had shared with us and
15 what Mr. Dille had related to me, there was an understanding
16 with respect to future ownership, and they still checked the
17 box no.

18 That, to me, was the single most compelling reason
19 for us to say stop. Get an opinion. This could really hurt
20 us and our licenses because you cannot lie and make a
21 misrepresentation on a filing with the FCC. In our license
22 case, we had a guy lose at the U.S. Court of Appeals because
23 he filed a false document with the Commission, so we knew
24 how important that was.

25 Q I am not sure if your testimony was clear as to

1 who it was who explained what he meant by the term
2 understanding. Was that Mr. Hicks speaking, was it Mr.
3 Brown, or was it somebody else?

4 A Can you repeat the question? I don't understand.

5 Q When we talked about the question, the question
6 regarding are there any understandings concerning future
7 ownership, I do not believe your testimony clearly indicated
8 who the person was who was speaking and stating what he
9 understood by that question from the FCC.

10 A Do you mean in response to my question?

11 Q Correct.

12 A Okay. The discussion about the ownership and the
13 documents was Mr. Brown. Mr. Brown made the representations
14 about the documents don't exist now. How could he check
15 anything? How could he check yes when there weren't any
16 documents? That was Mr. Brown.

17 Clearly from Mr. Hicks' standpoint, there was an
18 understanding regarding future ownership. That wasn't in
19 dispute whether or not there was a plan to transfer the
20 stations in the future or the station in the future. That
21 was not an issue. He didn't say no, no, no. We never said
22 that. It was that there's no documents. That's why the No
23 box is checked.

24 That was Mr. Brown talking with Mr. Hicks probably
25 agreeing with him, but Mr. Brown at that particular --

1 MR. JOHNSON: Your Honor? Your Honor?

2 JUDGE CHACHKIN: I will strike the comment about

3 Mr. Hicks --

4 MR. JOHNSON: Fine.

5 JUDGE CHACHKIN: -- since that is speculation.

6 BY MR. SHOOK:

7 Q Mr. Hicks was present when Mr. Brown was stating
8 this, was he not?

9 A Yes, he was.

10 Q Following this January 28 board meeting, did you
11 have any conversations with Mr. Dille about the subject?

12 A I had a lengthy conversation with Mr. Dille about
13 this subject a year or so later. Prior to that time, I
14 maybe just would see him at a convention. I know there were
15 a couple comments made, but we had no conversations, no.

16 Q All right. Did there come a time when you learned
17 that the FCC had approved the assignment of the WRBR license
18 to Hicks Broadcasting of Indiana, LLC?

19 A Yes.

20 Q How did you learn about it?

21 A I believe that Dave actually -- I believe that
22 Dave told me that it had been approved.

23 Q What did you do about that, if anything?

24 A I wanted to know where the opinion letter was,
25 which I believed arrived on the same day that Dave told me

1 that.

2 Q An opinion from whom?

3 A We received an opinion from Alan Campbell. I
4 think it's Erwin Campbell, but Alan Campbell is the
5 attorney.

6 Q I want to direct your attention Mass Media Exhibit
7 23 again. It is now pages 20 through 23.

8 A Okay. I have that.

9 Q The letter that begins on page 21 that bears the
10 date of March 31, 1994, is that a copy of the letter that
11 you were talking about, the opinion letter?

12 A Yes, it is.

13 Q You received it on or about that date?

14 A I believe that a copy was faxed to me on that day,
15 or it may have been faxed to Mr. Hicks, who handed it to me,
16 but I believe I received it on that exact date.

17 Q Did you have any conversations with Mr. Campbell
18 as a consequence of receiving this letter?

19 A Yes, I did.

20 Q What happened?

21 A Immediately upon finishing the letter, I picked up
22 the phone and called Mr. Campbell and asked him why in the
23 opinion letter he had made no reference to the plan for
24 future ownership of the stations or the station, why he had
25 not discussed that.

1 As I recall, the conversation took 30 to 45
2 minutes. He spent a lot of time listening. He told me that
3 he didn't have -- that he had reviewed the documents that he
4 had, that he didn't have any documents that described the
5 things that I was talking about, the option to sell Dave's
6 portion to Mr. Dille's children. He said he didn't have
7 that to review.

8 I said well, it's all out in the atmosphere here,
9 and it's been discussed at numerous meetings that this is
10 going to take place. The reason the opinion letter hadn't
11 come earlier, we were told, is because those documents
12 hadn't been finalized, and that's why they kept holding off
13 on the opinion. Of course, the opinion should have been
14 here before it was ever filed, but that's another -- he said
15 he didn't have any documents.

16 I said well, if there were documents or if there
17 was an agreement to sell Mr. Hicks' interest to someone
18 else, wouldn't that have an impact on your opinion? He said
19 yes, it may have an effect on the opinion. He said I will
20 make some phone calls, and I'll find out. Thank you.

21 It was a very pleasant, proper conversation. He
22 said I'll get back to you. I have not spoken to Mr.
23 Campbell since. That's what took place.

24 Q Now, once you learned that the FCC had approved
25 the assignment of the WRBR license to Hicks Broadcasting of

1 Indiana, LLC, did you ever have any conversations or
2 discussions with Mr. Hicks about how he was going to operate
3 WRBR and still meet his responsibilities at Crystal?

4 A I believe by that point we had already established
5 Mr. Hicks' proposed involvement with the day to day
6 operations. He'd been pretty clear on that.

7 From the point where the approval was granted on,
8 I don't recall any specific discussions about what he was
9 going to do other than there was no -- it was understood
10 that he would not be taking days off and spending them in
11 another market; that he had a job to do in Kalamazoo.

12 Q Now, at approximately the time that you learned of
13 the Commission's grant of the assignment application for
14 WRBR to Hicks Broadcasting of Indiana, LLC, do you recall
15 having any conversations with Mr. Brown regarding use of an
16 arbitrator?

17 A Use of an arbitrator in connection with what?

18 Q I am just asking whether you had any such
19 conversations; if you can recall any?

20 A There were discussions with Mr. Brown and with Mr.
21 Cook both about a disintegrating relationship between Dave
22 and myself over this issue and other things that were
23 bubbling up within the workplace where he did not appear to
24 be recognizing my authority as president and CEO in some
25 business areas.

1 We did talk about the need to come to some
2 understanding about how things would work in the future and
3 what Mr. Hicks' responsibility was there. It was easier for
4 me to talk to Ric Brown and John Cook about that than it was
5 to talk to Dave about it.

6 Q Does the name David Miholer mean anything to you?

7 A Yes, it does.

8 Q Who is David Miholer?

9 A David Miholer, his radio name is Phil Britten.
10 David Miholer was an employee of Hicks Broadcasting
11 Corporation at the time of the merger and was the WKFR
12 program director.

13 Q Now, there came a time when Mr. Miholer left the
14 employ of Crystal?

15 A That's correct.

16 Q Approximately when did that happen?

17 A I believe it was November of 1993.

18 Q Did there come a time after his departure from
19 Crystal's employ that you saw him again?

20 A Yes.

21 Q Where did you see him?

22 A I saw him in our offices in Kalamazoo.

23 Q Approximately when?

24 A It was May. Early May, 1994.

25 Q What happened, if anything, as a consequence of

1 your seeing him there?

2 A I spoke privately with Mr. Hicks about Dave
3 Miholer's presence in the building and told him that his
4 presence there -- I had learned about it from other
5 employees who had come to me with concerns saying they felt
6 uncomfortable having him in the building, wanting to know
7 what he was doing there, why he was walking into rooms as if
8 he was still working there. I observed that behavior
9 myself.

10 I took Mr. Hicks aside and asked him what he was
11 doing there, expressed my displeasure that Mr. Miholer was
12 in the building and asked Dave to ask Mr. Miholer to leave,
13 to leave immediately and that Mr. Miholer should not be
14 invited to return to the building in the future.

15 Q Now, did you have any conversations at that time
16 with Mr. Miholer himself?

17 A I don't believe I talked with him. I did remember
18 he had parked his car by the back door, and one of the
19 employees -- I mean, by the back door. I mean like within
20 six feet of the back door of the building there's this car
21 sitting.

22 I recall that there was an employee that was
23 sitting out -- this was after he had left the building, but
24 was sitting out there in his car. Employees were going out
25 and sitting in his car and talking with him.

1 I remember going out the back door, and whoever
2 the employee was in the car, asked them to get out, get back
3 to work and then asking him to leave. I asked him to leave
4 the property. I said take your car and leave the property,
5 please.

6 Q So you had no conversation with Mr. Miholer as
7 such?

8 A Not at that time, no.

9 Q Did you have any conversation with Mr. Hicks about
10 Mr. Miholer's status?

11 A At the time when I asked Dave to have him leave
12 and I didn't want him back again, this was another hallway
13 conversation. The back hall. There was nobody else around.

14 Dave made it very clear to me, both with finger
15 wagging and his words, that I was not going to tell him who
16 he could and couldn't have in the building, that he could
17 have people there any time he wanted and that I was not
18 going to tell him what to do.

19 I responded and said I have no issue with who you
20 choose to associate with, but if you want to see them in the
21 future, invite them to your house. Don't invite them to the
22 office.

23 Q Did anything come up at that conversation with Mr.
24 Hicks about Mr. Miholer's current employment?

25 A At that point in time, no. While we were standing

1 in the hallway, no, I don't believe it did. I think he said
2 that he was there to drop something off, that he was acting
3 as a courier or messenger to drop something off from South
4 Bend or from Mr. Dille. That's why he was there.

5 Q Did there come a time when you learned that Mr.
6 Miholer had been employed in South Bend?

7 A I knew that long before this took place, yes.

8 Q What is it that you knew?

9 A Dave Miholer's employment had been terminated for
10 cause, and he was not pleased with the fact that he had been
11 terminated. He made some threats as he left with respect to
12 staff members and the future of our company and what impact
13 his departure would have on that. The circumstances of his
14 termination were such that as a broadcaster, I wouldn't want
15 the risk and the liability associated with having him as my
16 employee.

17 Dave Hicks shared with me after the termination
18 that he was advocating on behalf of Mr. Miholer to gain him
19 employment and that he had set up an appointment with Mr.
20 Dille for Dave Miholer to go interview and have an
21 employment opportunity to one or more of Mr. Dille's
22 stations.

23 This came up because Dave shared this with me, and
24 Dave was upset because Dave Miholer had not shown up for the
25 appointment. At that point I said to Dave why would you be

1 recommending Dave Miholer for employment with anyone that
2 you considered to be your friend, given what we know about
3 him and his FCC related misconduct?

4 MR. HALL: Your Honor, this is speculation. There
5 are no facts in evidence about any FCC misconduct.

6 JUDGE CHACHKIN: This is not being offered for the
7 truth.

8 MR. HALL: Okay.

9 JUDGE CHACHKIN: This is a conversation he had.
10 Overruled.

11 THE WITNESS: We had terminated Mr. Miholer, aside
12 from lack of professional competence, also because he had --
13 we had obtained information and evidence that he had
14 received a large number of gratuities we'll call them from
15 independent record reps and from record companies that had
16 benefitted him personally.

17 As we learned more about this, this became very
18 difficult for me as a licensee to accept. Although this had
19 happened prior to the merger taking place, he had a
20 pre-disposition to be running in those areas, and there was
21 a questionable receipt of a gratuity post-merger that
22 prompted this discussion.

23 I asked Mr. Hicks how is it that you can be
24 offering this guy up to a friend and recommending him for
25 employment when you know these things about him? These

1 things were not disputed by Mr. Hicks at the time either.
2 It just seemed unbelievable that he could be pushing him for
3 employment.

4 What Mr. Hicks' response was he's got to have a
5 job somewhere, and he's a very talented guy. I agree. He's
6 a very talented guy, but I certainly would not recommend him
7 to a friend of mine and say this guy should go to work for
8 you without telling a friend all the other things to go
9 along with it.

10 BY MR. SHOOK:

11 Q To your knowledge, did Mr. Miholer obtain
12 employment in South Bend at some point?

13 A It's my understanding that he did obtain
14 employment at one or more of Mr. Dille' stations in the
15 Elkhart/South Bend markets.

16 Q Do you have any knowledge as to what it was Mr.
17 Miholer was doing at those stations?

18 A I know that he was a program director. Curiosity
19 got the best of me, and one day I picked up the phone and
20 called and asked who the program director -- I think there
21 were two stations. One I think was playing oldies. I don't
22 recall, but there were two call letters, WRBR and another
23 station, that I was calling about because the staff -- I
24 mean, this guy had worked for us for years. He still had
25 friends on the staff. They still connected with one

1 another, so I had been told that he was down there.

2 Just to independently confirm this, I called and
3 asked who's the program director of it was the station other
4 than WRBR. I was told Phil Britten. I called back later
5 and asked who the program director was of WRBR, and they
6 said Phil Britten, so I had him -- so they were
7 acknowledging that he was the program director of at least a
8 couple of stations.

9 Q Now, approximately when was that call made?

10 A Oh, I would say the first quarter of 1994. I
11 couldn't tell you specifically.

12 JUDGE CHACHKIN: Are you moving on to another
13 subject?

14 MR. SHOOK: Yes, sir.

15 JUDGE CHACHKIN: We will take a ten minute recess.

16 (Whereupon, a short recess was taken.)

17 JUDGE CHACHKIN: Back on the record.

18 Mr. Shook?

19 MR. SHOOK: Thank you, Your Honor.

20 BY MR. SHOOK:

21 Q Mr. Sackley, do you know an attorney by the name
22 of Nat Emmons?

23 A Yes, I do.

24 Q How did you come to know him?

25 A Nat Emmons was a referral. I received his name

1 from Dick Zaragoza. He's an FCC attorney.

2 Q And why did you receive that referral?

3 A At the beginning of 1994 when Mr. Hicks' FCC
4 application for WRBR was being developed and we were talking
5 about the opinion and all these things, I certainly had some
6 concerns about how his action or inaction may impact upon
7 our licenses.

8 After the application had been filed and some of
9 the dust was settling, I had concerns about what the impact
10 of the what I believed to be misrepresentation on the
11 application. I was concerned about what impact this may
12 have on our company and our licenses, so I, at Mr.
13 Zaragoza's suggestion, I contacted Mr. Emmons, and I think
14 Mr. Zaragoza said that he had qualifications in this
15 particular area because of some big case he had done. I
16 think it was in Florida. He thought he was well qualified
17 to deal with these types of questions.

18 I contacted him, spoke with him and told him what
19 my concerns were to set the stage for him as far as what I
20 had seen and then arranged to send documents to him that I
21 had, and then he made arrangements to obtain documents from
22 the Commission file room to review.

23 I asked him to engage in a review of the proposed
24 transaction. At that time the transaction was I guess
25 already completed; to review that transaction and determine

1 what impact, if any, that transaction might have presently
2 or in the future on our company and our licenses.

3 Q Did you receive something from Mr. Emmons?

4 A I received a letter from him. I also believe
5 there was a separate -- a second letter with some
6 recommendations, yes.

7 Q What was the gist of what was in that letter?

8 MR. BERNTHAL: Object, Your Honor.

9 JUDGE CHACHKIN: The letter will speak for itself.
10 Is the letter available?

11 MR. SHOOK: Your Honor, I do not believe I have it
12 immediately at hand, but I am sure it is something that I
13 could get.

14 JUDGE CHACHKIN: Well, the letter would speak for
15 itself.

16 MR. SHOOK: Well, if can I rephrase the question,
17 because what I am after is what his state of mind was upon
18 receipt and review of the letter. Perhaps I should just ask
19 that directly.

20 BY MR. SHOOK:

21 Q Upon receipt of the letter, what was your state of
22 mind relative to continuing in a business relationship with
23 Mr. Hicks?

24 A Mr. Emmons' opinion expressed --

25 MR. JOHNSON: Object, Your Honor.

1 JUDGE CHACHKIN: I will sustain the objection.

2 The question is what was your state of mind after
3 receiving this opinion?

4 THE WITNESS: My state of mind was that the
5 concern that I had had over the circumstances of this
6 transaction was borne out, and I was -- I felt comfortable
7 in that Mr. Emmons had outlined a --

8 MR. JOHNSON: Objection.

9 JUDGE CHACHKIN: Forget about Mr. Emmons' stated
10 opinion. What was your reaction as a result of your reading
11 his opinion concerning your continued relationship with Mr.
12 Hicks?

13 THE WITNESS: It was clear after reading the
14 letter that a change in the relationship would take place
15 and that Mr. Hicks would need to be removed from his
16 employment and his position on the board of directors with
17 the company.

18 BY MR. SHOOK:

19 Q Did a meeting of the board of Crystal take place
20 on or about July 15, 1994?

21 A Yes, it did.

22 Q What happened at that meeting?

23 A At that meeting the board members present passed a
24 resolution basically removing Mr. Hicks from his employment
25 and placing him on unpaid administrative leave.

1 Q Now, you said --

2 JUDGE CHACHKIN: What was the date of this board
3 meeting?

4 THE WITNESS: I believe July 15, 1994.

5 BY MR. SHOOK:

6 Q Now, you made reference to board members present.
7 Were there board members who were not present?

8 A Yes, there were.

9 Q Who was present? Who was not?

10 A The board had six members. Mr. Brown resigned
11 from the board of directors effective that date. He had
12 told me a day or two before the meeting that he was going to
13 do that, and Mr. Hicks -- so he was on the board, but had
14 tendered a letter of resignation, so we were down to five.
15 Mr. Hicks, although in the building, chose not to attend the
16 meeting.

17 Q Following this board meeting, what contacts, if
18 any, have you had with Mr. Hicks?

19 A I'd say pretty much all the contacts with Dave
20 other than maybe seeing him at a convention, you know, and
21 saying hi were in connection with a civil lawsuit that he
22 ultimately filed.

23 The first meeting after that was actually with
24 Dave and his attorney, Robert Yonker, probably in August of
25 1994, the following month, and all of the meetings

1 subsequent to that time were either with his attorney
2 present or -- actually, they were all with his attorney
3 present in connection with litigation that he filed.

4 Q Now, was that litigation ultimately resolved?

5 A It is now, yes.

6 Q What was the resolution on that?

7 A The parties entered into a settlement agreement on
8 August 8 or 9 of 1997.

9 Q And so to your understanding, that matter is now
10 finished?

11 A Yes, sir.

12 Q Following the July, 1994, board meeting of
13 Crystal, what, if any, contacts have you had with Mr. John
14 Dille?

15 A Again, other than casual pass in the hall or
16 elevator stuff at conventions, and I was present at Mr.
17 Dille's deposition in the Hicks lawsuit.

18 Dick Zaragoza and I had a meeting with Mr. Dille
19 in New Orleans during the NAB radio show, which it was in
20 September. It was probably 1995, if that's when the
21 convention was. I think it was 1995. Maybe it was 1996.
22 Whenever it was in New Orleans, that's when we had it. I'll
23 have to check back on days. It was a few months before his
24 deposition, which I believe it was probably 1996.

25 Q What, if any, conversation did you have with him

1 at the time?

2 A Mr. Zaragoza had conversations either directly
3 with Mr. Dille or with Mr. Dille's attorney, and we were
4 anxious to speak with Mr. Dille to seek his assistance in
5 helping us resolve the intractable dispute with Mr. Hicks
6 and his lawsuit. The meeting was scheduled with that goal
7 in mind.

8 As I recall, Mr. Dille had been acting as either
9 an intermediary or an advocate in some regard during the
10 months prior to that meeting. I know there had been contact
11 between Mr. Hicks' civil attorney, Bob Yonker, and Mr. Dille
12 or his attorneys because the case was ongoing, and there
13 were lots of things that tied together.

14 What the purpose of that meeting was was to let
15 Mr. Dille know that from our point of view we thought that
16 he was tied into this Hicks lawsuit very tightly and that we
17 were coming up to the point where we were going to be
18 engaging in substantial discovery depositions.

19 We asked him to use his relationship with Mr.
20 Hicks -- at that point I think he was Mr. Hicks' employer
21 also; to use his relationship with Mr. Hicks to gain access
22 and ask Dave to be more reasonable in his demands and
23 understand that the further we went in this case the more
24 things were going to come out and that it was not our
25 attention to damage Mr. Dille or his reputation, but that

1 things were going to come out in the course of the
2 proceeding that would be or have the potential for being
3 damaging.

4 He was very cordial, but insisted that this was
5 really our dispute, not his dispute, that he really had
6 nothing to do with this and that all these allegations
7 really were without basis and, you know, were not valid, but
8 that he would do whatever he could to try and bring Dave to
9 the table. We pretty much left it at that.

10 Q Did the subject of WRBR come up?

11 A Oh, yes. It was very much a part of the
12 discussion.

13 Q What was discussed?

14 A That the reason that we had -- the civil suit
15 resulted from our termination of Mr. Hicks' employment and
16 then subsequently taking steps, the other shareholders
17 taking steps, to make the for sale provision unavailable to
18 him as a way of an exit. We said that in our civil case we
19 were going to use as a defense as to why we eliminated the
20 for sale provision and why we terminated his employment, why
21 we took the steps that we did.

22 We were going to have to bring out in the civil
23 case the FCC matters that we've already discussed about that
24 we took these actions because at the recommendation of FCC
25 counsel, Mr. Emmons, we had to take these actions to protect

1 our own licenses and that we could not be held responsible
2 for having damaged Mr. Hicks or having oppressed Mr. Hicks
3 if we took steps that were recommended by counsel that were
4 designed to preserve the value of our assets, that we
5 couldn't be faulted for having done that and that Mr. Hicks
6 had no right to claim that this was -- that he was being
7 oppressed as a shareholder in this regard.

8 So, our case to the Circuit Court Judge in
9 Kalamazoo County was going to be laying out saying you see
10 all these FCC problems that we have. We had to take these
11 steps to protect ourselves, and the FCC problems that we
12 described and were described to Mr. Dille were the ownership
13 set up, the future ownership set up, the day to day
14 responsibilities, the financing and how all those things had
15 been described to us by Mr. Hicks. To us, that was the
16 whole case.

17 He told us that he was doing all these things, and
18 we had no option other than to take the steps that Mr.
19 Emmons recommended, and here we were finding ourselves in a
20 Court being challenged by Mr. Hicks for having taken the
21 action that we took to preserve the viability of our
22 licenses.

23 We let Mr. Dille know that this was all going to
24 come out and that like it or not, he was going to be in this
25 case. He was going to be deposed. His kids were going to

1 be deposed. People who worked for him were going to be
2 deposed. That was the message we gave him.

3 Q What, if anything, did he say to you as a result?

4 A He would fight this, that these were allegations
5 that were without basis potentially damaging to his
6 reputation. He was standing his ground letting us know that
7 we shouldn't mess with him.

8 Q Did there come a time when you became aware of an
9 operating agreement concerning WRBR?

10 A I don't know if I know a document as an operating
11 agreement.

12 MR. SHOOK: Your Honor, I may come back to that
13 area later.

14 BY MR. SHOOK:

15 Q With respect to the application that was filed on
16 behalf of Hicks Broadcasting of Indiana, LLC, to acquire
17 WRBR, did you become aware of what response was given
18 relative to the question concerning financial qualifications
19 of the applicant?

20 A In reviewing the application, yes.

21 Q What is it that you remember?

22 A I think at the time I reviewed the application, I
23 knew that financing was going to be provided by the seller;
24 that there was no bank involved. It wasn't a cash deal.

25 As to what the specific financing arrangement was,

1 I don't recall right now that that was -- that the answer to
2 the financial qualification question was of specific or
3 particular significance as we looked at this. It was the
4 ownership one that we have discussed previously.

5 On the financial qualifications, the discussion at
6 the January 28, 1994, board meeting summed it up pretty
7 completely when Dave indicated that he had no -- he didn't
8 have to come up with any money, I mean, even on the deposit.
9 It was just a letter of credit was his half of it. To this
10 day, I don't know who paid for the letter of credit, but it
11 was not going to be a demand on him.

12 When we were talking about the financial
13 obligations for the future, working capital and cash flow
14 and those types of things, I said well, when the first
15 payment comes due if there's no -- he said well, it's going
16 to be paid out of revenues, out of cash flow. I said what
17 if that's inadequate to pay this? Dave says John Dille will
18 be at my door to back me up.

19 We knew, because Dave had said it repeatedly for
20 several months, that this was a convenience transaction. He
21 had told us he wasn't putting any money into the deal, so
22 specifically regarding financial qualifications I guess I
23 would assume he was financially qualified to do this deal
24 under the circumstances that were described. Whether he
25 made a misrepresentation or whether I believe he did on that

1 item, I don't --

2 MR. JOHNSON: Object, Your Honor. I object to his
3 opinion as to whether there was a misinterpretation.

4 JUDGE CHACHKIN: Sustained.

5 THE WITNESS: Whether I had any specific thought
6 about that question and whether that might potentially be a
7 misrepresentation, I don't recall at this time.

8 BY MR. SHOOK:

9 Q What you understood from your conversations with
10 Mr. Hicks was that the idea was that station revenues were
11 going to provide the monies needed to pay off the Booth
12 note?

13 A That's correct.

14 Q And your subsequent conversations with him about
15 what if were if station operations were inadequate to make
16 the payments, a remark was made to the effect that money
17 would be provided from where?

18 A His exact words were John Dille will be at my door
19 to back me up.

20 Q Now, did you understand that remark to be
21 humorous?

22 A No.

23 Q Also with respect to the application, did you
24 become aware of the response given regarding the proposed
25 number of employees for WRBR?

1 A I have no specific recollection of that, no.

2 Q Does the name Steve Kline mean anything to you?

3 A It does now. It did not at the time that this was
4 initially reviewed, no.

5 Q When did you become aware of Mr. Kline?

6 A After the lawsuit was filed by Mr. Hicks, which I
7 think was December of 1994, and we began to prepare for our
8 defense in this case.

9 As we were looking at making our case with the
10 local Judge about the FCC, we learned that Mr. Kline was the
11 I think general manager there, and I was present at his
12 deposition.

13 Q And that is really all you know about Mr. Kline?

14 A That's correct.

15 Q What, if anything, did you know about a joint
16 sales agreement involving WRBR?

17 A The joint sales agreement was known I guess
18 probably going back into 1993. It may have even been
19 mentioned when I mentioned Dave showed me a few pages of
20 financial data about WRBR. I believe it came up at that
21 time.

22 It certainly came up later in the September board
23 meeting where again Dave is doing a favor for a friend, and
24 that's why he's not going to have to be involved in that
25 because there's already things that play. It's an operating

1 station, not a start up.

2 I know -- I mean, I know more about the JSA now
3 than I did at the time, so I can't tell you when I learned
4 different elements of it, but I'm aware of what was at play
5 there, yes.

6 Q And what was it that you were aware of?

7 A That John Booth had entered into an agreement with
8 Mr. Dille's company to sell the air time at WRBR and that
9 Mr. Dille believed that to be a good relationship, a good
10 deal for him.

11 MR. JOHNSON: Your Honor, I object to the
12 foundation for this testimony. I am not sure what the basis
13 of his knowledge is in response to the question; for
14 example, whether it was something Mr. Dille said, whether
15 something Mr. Hicks said or something --

16 JUDGE CHACHKIN: I will sustain the objection.
17 Lay a foundation.

18 BY MR. SHOOK:

19 Q Can you remember how it is that you came to know
20 about the joint sales agreement involving WRBR?

21 A Initially from Mr. Hicks as part of what this
22 package was and then later got far more information directly
23 from Mr. Dille both in his deposition testimony and in the
24 meeting in New Orleans.

25 Q If you can try to separate out what it was you